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No. 84-806

IN THE
SUPREME COURT OF THE
UNITED STATES
October Term, 1984

THE BUCKINGHAM CORPORATION
Petitioner,
v.
THE ODOM CORPORATION,
d/b/a ARIZONA DISTRIBUTING COMPANY,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUPPLEMENTAL BRIEF IN OPPOSITION TO PETITION

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Record)
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Respondent The Odom Corporation, d/b/a Arizona Distributing Company, respectfully submits this supplemental brief in opposition to the petition, and in response to the supplemental brief of petitioner and the "Memorandum of the United States as Amicus Curiae."

ARGUMENT

1. The government correctly recognizes that no substantial legal issue is presented, and that the court of appeals applied the standard of Monsanto Company v. Spray-Rite Service Corporation, 104 S.Ct. 1464 (1984), in reversing the directed verdict. Whether or not that standard was "correctly" applied turns entirely on the resolution of disputed facts and the inferences to be drawn from those facts. If it were to hear this case, the Court would merely be substituting its own analysis of the facts for that of the court of

appeals on an issue where the substantive law is undisputed.

Although the invitation to the Solicitor General to express the government's view may have focused some undue attention on this case, that should not bootstrap the court of appeals' decision beyond its inherent insignificance. The uncertainty in the business community posited by petitioner, if it exists, reflects no more than the inevitable by-product of a law where each case turns on its own facts. Petitioner's claim that the decision below, which has no precedential value, somehow makes dealer termination in the interest of economic efficiency "impossible as a practical matter" is unfounded. As the government points out, other decisions since Monsanto have affirmed such legitimate supplier conduct.

Of course, we disagree with the government's analysis of the evidence; that evidence, if anything, is stronger here than was the case in Monsanto. See "Brief In Opposition To Petition" at 10-11, n.10. However, the possibility that this Court might agree with the government's view of the evidence does not warrant review. The Court merely would be performing the same task already performed by the court of appeals, which applied the correct substantive law. Such an exercise would be particularly unwarranted given the interlocutory posture of the case. See "Brief In Opposition To Petition" at 16.

2. As discussed in the "Brief In Opposition To Petition" at 15-16, petitioner's invitation tc the Court to reconsider the per se rule should be rejected. The position of Congress that the law should remain the same could not be clearer, and petitioner's supposition

that the Department of Justice still adheres to the views of former Assistant Attorney General Baxter on this issue is far from certain. Moreover, as in Monsanto, the question was neither determined by the district court nor raised in the initial appeal to the court of appeals.

CONCLUSION

For the foregoing reasons, as well as those stated in the "Brief In Opposition To Petition" and the

"Memorandum Of The United States As Amicus Curiae," the petition should be denied.

Respectfully submitted,

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